Supreme Court, U.S.
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No. 99-924

In the Supreme Court of the United States

OCTOBER TERM, 1999

HERMAN FIELDS,

Petitioner,

V.

POOL COMPANY, incorrectly sued as Pool Offshore, Inc.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

Respondents

Pool Company

Pool Company's parent companies are Nabors Holding Company and Nabors Industries, Inc.

Pool Company's non-wholly owned subsidiary is Pool International Argentina S.A.

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STATEMENT OF THE CASE

Herman Fields, a former derrick hand employed by Pool Company, was allegedly injured on or about February 26, 1997 while working on Pool Company's ("respondent") platform rig no. 10. A "platform" rig describes equipment which Pool uses to provide workover and drilling operations on offshore fixed platforms. This equipment is transported to and assembled on an offshore fixed platform. The undisputed evidence offered in the lower courts proved that a "platform" rig is not a vessel, it does not float and it cannot move on its own. As such, there is little question that the lower courts were correct in concluding that Pool's rig no. 10, to which plaintiff was assigned, was not a vessel.

At the time of petitioner's alleged accident, respondent's platform rig no. 10 was assembled on Oryx Energy Company's Viosca Knoll Area, Block 836, Neptune Spar platform located on the Outer Continental Shelf ("OCS"), 100 miles off the Alabama coast. The accident occurred when petitioner was assisting in removing a bushing which became jammed in the rotary table of respondent's rig no. 10. Allegedly, Fields leaned over the bushing to guide it out of the rotary table when the bushing pulley slipped out, striking Fields in the face.

Oryx's Neptune Spar platform was placed on location in the Viosca Knoll Area, Block 826 on the OCS in late September, 1996. The undisputed evidence proved that the Neptune Spar was designed to remain at this exact location for the 15 to 20 years of productive life of the wells on the seabed below it. The uncontradicted evidence further proved that the Neptune Spar was permanently attached to the OCS by use of six chain/wire rope lines which connected the

Neptune Spar platform to six massive pilings which were driven into the sea floor of the OCS. These pilings are seven feet in diameter and 180 feet long. In addition to these six lines, the unrefuted evidence also proved that two permanent eight inch diameter pipelines extend from the top deck of the Neptune Spar to the OCS sea floor. The Neptune Spar is also connected to the OCS sea floor by seven, nine and 5/8 inch casing risers from the seven individual wellheads located on the sea floor. Due to these permanent connections to the sea floor, the Neptune Spar is only capable of extremely limited movement. More particularly, the undisputed evidence offered in the courts below confirmed that the Neptune Spar can move no further than 250 feet by tightening and slackening its six lines. Even then, this limited movement is only to allow the Neptune Spar access to and to facilitate production from the seven wells located below the platform by allowing for more efficient reworking and redrilling of the wells by placing the Neptune Spar directly above each well. As such, this limited movement is solely for the purpose of assisting the Neptune Spar in performing its function as an oil and gas production platform.

While not relied upon by the lower courts in their decisions, the undisputed evidence offered in the courts below also proved that Fields did not have a sufficient temporal connection to the Neptune Spar, even if it is a vessel, which is denied, to meet this Court's requirements under *Chandris, Inc. v. Latsis,* 515 U.S. 347, 115 S.Ct. 2172, 132 L.Ed. 2d 314 (1995) and *Harbor Tug and Barge Co. v. Papai,* 520 U.S. 548, 117 S.Ct. 1535, 137 L.Ed. 2d 800 (1997). More particularly, plaintiff was only temporarily assigned to Pool's platform rig no. 10 which was only temporarily aboard Oryx's Neptune Spar. All of Fields' other work for Pool was performed solely on platform rigs which

were used aboard stationary, fixed platforms prior to the incident in question. Therefore, the evidence clearly showed that Fields was never permanently assigned to the Neptune Spar or any vessel.

Based on these undisputed facts, the U.S. District Court for the Eastern District of Louisiana found that the Jones Act did not apply to petitioner's claims as he was not a seaman aboard a vessel at the time of his injuries. More particularly, U.S. District Judge Edith Brown Clement denied plaintiff's Motion to Remand finding that the federal district court had subject matter jurisdiction over petitioner's claims under the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. §1331, and that the case was properly removed from state court. Judge Clement in her well reasoned opinion expressly relied upon the settled doctrine that even when a case is not apparently removable, a federal district court "can pierce the pleadings and analyze supporting affidavits to determine whether the plaintiff's claims 'are baseless in law and in fact.'" (A. 19-20) (quoting *Dodd v. Fawcett Publications, Inc.*, 329 F.2d 82, 85 (10th Cir. 1964)). Respondent then moved for summary judgment seeking dismissal of petitioner's claims on the basis that Pool was immune from suit pursuant to the exclusive remedy provisions of the OCSLA, as the district court had found that petitioner was not a Jones Act seaman. By Order and Reasons dated February 2, 1998, U.S. District Judge Edith Brown Clement granted respondent's Motion for Summary Judgment confirming that Fields was not a Jones Act seaman and respondent was entitled to summary judgment as Fields' OCSLA statutorily immune employer.

Petitioner timely appealed this ruling to the U.S. Court of Appeals for the Fifth Circuit. In its Opinion of July

27,1999, the Court of Appeals affirmed the District Court in all respects, finding as a matter of law under its prior jurisprudence that the Neptune Spar was a platform, not a vessel. Moreover, the Fifth Circuit held that the District Court had properly used its discretion in piercing the plaintiff's pleadings and declining to remand the case to state court.

ARGUMENTS FOR DENYING WRIT

ARGUMENT I

Petitioner has failed to offer compelling reasons for granting a writ of certiorari.

Rule 10 of the Rules of the United States Supreme Court specifically provides that "[rleview on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." The principal purpose for which this Court grants writs of certiorari is to decide conflicting cases between the federal appellate courts and state courts regarding federal law. *Braxton v. U.S.*, 500 U.S. 344, 347, 111 S.Ct. 1854, 1857, 114 L.Ed. 2d 385 (1991).

To further elaborate on this rule, the Court has provided a non-exclusive list of cases which it generally accepts for decision on writs of certiorari. The present case does not approach these illustrations in any way. More particularly, the U.S. Fifth Circuit's opinion in the present case does not in any way conflict with the decision of any other court. Even a cursory review of the appellate court's decision clearly shows that it is well reasoned and supported by prior decisions of that court on vessel status. (A. 8-12) In fact, the U.S.

Fifth Circuit considered and analyzed virtually all the cases upon which petitioner relies in his writ application and either factually distinguished those cases or found other cases to be more persuasive and controlling in its finding that the Neptune Spar was not a vessel. As such, petitioner's argument that this Court should exercise its supervisory power based upon the U.S. Fifth Circuit's alleged departure from its prior jurisprudence is wholly unfounded.

Petitioner has also failed to show that the U.S. Fifth Circuit's opinion in any way conflicts with relevant decisions of this Court. The appellate court clearly followed the test formulated by this Court to decide vessel status cases and applied those factors correctly to conclude that the Neptune Spar was a platform and not a vessel. *The Robert W. Parsons*, 191 U.S. 17, 30, 24 S.Ct. 8, 12, 48 L.Ed. 73 (1903); *Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625, 7 S.Ct. 336, 30 L.Ed. 501 (1887). In addition, the appellate court reviewed and followed this Court's recent decisions in *Harbor Tug and Barge Co. v. Papai*, 520 U.S. 548, 117 S.Ct. 1535, 137 L.Ed. 2d 800 (1997) and *Chandris, Inc. v. Latsis*, 515 U.S. 347, 115 S.Ct. 2172, 132 L.Ed. 2d 314 (1995) in analyzing whether the Neptune Spar was a vessel and petitioner a seaman. (A. 7) Furthermore, the lower courts' decisions on removal were guided by and followed well supported jurisprudence in both the appellate courts and this Court. *Great Northen Ry. Co. v. Alexander*, 246 U.S. 276, 38 S.Ct. 237, 62 L.Ed. 713 (1918); *Chesapeake & 0. R. Co. v. Cockrell*, 232 U.S. 146, 34 S.Ct. 278, 58 L.Ed. 544 (1914); *Boyle v. Chicago, R.I. & P. Ry. Co.*, 42 F.2d 633, 634 (8th Cir. 1930). As such, petitioner has completely failed to set forth any proper basis for this Court to exercise its discretion and grant a writ of certiorari in the present case.

ARGUMENT II

The Neptune Spar is legally a platform, not a vessel.

Congress defined the term "vessel" as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation by water." 1 U.S.C. §3. Based upon this legal definition, this Court, as well as the appellate courts of the United States, have repeatedly held that the most fundamental factor for determination of whether a structure is a vessel or a platform is the purpose for which it was constructed and the business in which it was engaged. *The Robert W. Parsons,* 191 U.S. at 30; *Cook v. Belden Concrete Products, Inc.*, 472 F.2d 999, 1001 (5th Cir.), *cert denied*, 414 U.S. 868, 94 S.Ct. 175, 38 L.Ed. 2d 116 (1973). Moreover, for over 100 years courts have held that certain objects which undeniably float, including dry-docks, are still not vessels. *Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625, 7 S.Ct. 336, 30 L.Ed. 501 (1887); *Atkins v. Greenville Shipbuilding Corp.*, 411 F.2d 279 (5th Cir.), *cert denied*, 396 U.S. 846, 90 S.Ct. 105, 24 L.Ed. 2d 96 (1969). Likewise, other floating platforms that had no mode of power, but were towed short distances, have been found not to be vessels under the Jones Act as a matter of law as they were "legally indistinguishable from a floating dry dock." *Cook*, 472 F.2d at 1000; *Leonard v. Exxon Corp.*, 581 F.2d 522, 524 (5th Cir. 1978), *cert denied*, 441 U.S. 923, 99 S.Ct. 2032, 60 L.Ed. 2d 397 (1979).

In refining the vessel status test announced by this Court in *The Robert W. Parsons* and *Cope*, the U.S. Fifth Circuit Court of Appeals has correctly looked "to the importance of transportation as the craft's purpose." (A.8) (citing *Manuel v. P.A.W. Drilling & Well Service, Inc.*, 135 F.3d 344,

348 (5th Cir. 1998)). As noted by the U. S. Fifth Circuit in the present case, the appellate courts have particularly focused on three factors in deciding vessel status cases:

> (1) Whether the structure involved was constructed and used primarily as a work platform;
>
> (2) Whether it was moored or otherwise secured at the time of the accident; and
>
> (3) Whether any transportation function it performed was merely incidental to its primary purpose as a platform even if it was capable of moving and was sometimes moved across navigable waters in the course of normal operations.

Burchett v. Cargill, Inc., 48 F.3d 173, 176 (5th Cir. 1995). This test is expressly founded upon this Court's pronouncement in *The Robert W. Parsons* that the determination of vessel status should be based on "the purpose for which the craft was constructed and the business in which it was engaged." *The Robert W. Parsons,* 191 U.S. at 30.

In applying this test to the present undisputed facts, the lower courts correctly held that the Neptune Spar was constructed to primarily serve as a work platform, was permanently moored at the time of the petitioner's alleged accident, and served no transportation function beyond occasional incidental movement and theoretical mobility. As such, the Neptune Spar was properly determined to be a work platform and not a vessel under this Court's holding in *The Robert W. Parsons* and its progeny. Specifically, the appellate court correctly concluded based on the undisputed evidence offered in the district court that the sole purpose of

the Neptune Spar was to function as a platform from which the oil and gas field below it could be exploited and produced. The unchallenged evidence further showed that the Neptune Spar would remain in its current position for no less than the next 15 years and would not move from place to place like the specialized mobile drilling craft which courts have previously classified as vessels. Likewise, the appellate court correctly concluded, as required by this Court in *The Robert W. Parsons*, that the Neptune Spar was engaged "in the business" of a work platform as it was completely and totally secured to the sea floor "using an elaborate system that guarantees movement will be a difficult and expensive undertaking." (A. 10) The uncontested facts proved that the Neptune Spar was secured at considerable expense by chain lines to massive pilings imbedded in the sea floor and further fixed to the sea floor by its underwater infrastructure of pipelines and wellhead risers. Finally, the appellate court correctly decided that any question regarding the Neptune Spar's platform status was dispelled by the undenied evidence that the Neptune Spar could only be moved 250 feet in any direction. Under this Court's decision in *Cope*, such limited movement of a floating object is conclusive evidence of the craft's work platform status and non-vessel status.

Accordingly, both the U.S. District Court for the Eastern District of Louisiana and the U.S. Court of Appeals for the Fifth Circuit correctly analyzed the undisputed facts offered below and found that the Neptune Spar was as a matter of law a work platform, not a vessel, based upon this Court's prior decisions defining and elaborating on the term "vessel." Simply put, this Court in *Cope* held that the mere fact an object floats does not make it a vessel for purposes of maritime law or the Jones Act. Moreover, this Court

has held that any analysis of vessel status must look to the purpose for which the craft was constructed and the business in which it was engaged at the pertinent time. The undisputed facts below proved that the purpose of the Neptune Spar and the business in which it was engaged was that of a work platform and not a vessel.

ARGUMENT III

Removal to the U.S. District Court for the Eastern District of Louisiana from Louisiana state court was proper.

Petitioner also argues that the courts below should have remanded this case to state court pursuant to the "savings to suitors clause." 28 U.S.C. §1333(l). While petitioner is correct that suits brought under the savings to suitors clause and the Jones Act are not generally removable, this Court has long held that where the allegations contained in a state court complaint are made in an attempt to evade removal, a federal district court may review the pleadings and evidence to determine if the case if removable and should not be remanded to state court. *Great Northern Ry. Co. v. Alexander*, 246 U.S. 276, 38 S.Ct. 237, 62 L.Ed. 713 (1918); *Chesapeake & 0. R. Co. v. Cockrell*, 232 U.S. 146, 34 S.Ct. 278, 58 L.Ed. 544 (1914). Moreover, the appellate courts have long interpreted the above cases to permit district courts to look beyond the plaintiffs pleadings in order to determine whether an allegation is baseless in law and in fact and "serves only to frustrate federal jurisdiction." *Dodd*, 329 F.2d at 85; *Boyle*, 42 F.2d at 634; *Burchett*, 48 F.3d at 175-76. It is likewise well established that a district court should not pre-try a case to determine removal jurisdiction and must resolve all ambiguities in the law and disputed questions of fact in the plaintiff's favor. *Burchett*, 48 F.3d at

176. Nonetheless, a district court may equally deny remand when it "determine[s] that as a matter of law there was no reasonable basis for predicting that the plaintiff might establish liability." *B., Inc. v. Miller Brewing Co.*, 663 F.2d 545, 551 (5th Cir. 1981).

In the present case, both the courts below found that there were no disputed questions of fact which precluded a finding as a matter of law that the Neptune Spar was a platform and therefore plaintiff was not a Jones Act seaman. Moreover, both the courts correctly concluded that there was no ambiguity in the current controlling substantive law which in any way would inure in petitioner's favor as the law on vessel status is well established and the facts of the present case proved that the Neptune Spar was a work platform and not a vessel. As such, the courts below properly exercised their jurisdiction to analysis plaintiff's allegations of Jones Act seaman status and correctly held that there was no reasonable basis upon which petitioner could establish liability under the Jones Act. Therefore, removal and refusal to remand the case were proper.

CONCLUSION

The district and appellate courts properly considered petitioner's claims and properly granted respondent's Motion for Summary Judgment. The petitioner, Herman Fields, is not legally a Jones Act seaman as he was not injured aboard a vessel as a matter of law. The courts below properly exercised their discretion in retaining jurisdiction over this claim and finding that the Neptune Spar was a work platform, not a vessel, and that petitioner did not qualify for Jones Act seaman status. Accordingly, this Court should decline to exercise its discretion under the present facts and prior proceedings.

Respectfully submitted,

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